

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

SEP 14 2006

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

V.

CODY JOSEPH STORER,

Defendant - Appellant.

No. 03-30108

D.C. No. CR-02-00146-BLW

MEMORANDUM*

Appeal from the United States District Court
for the District of Idaho
B. Lynn Winmill, District Judge, Presiding

Submitted September 12, 2006**
Portland, Oregon

Before: HAWKINS, SILVERMAN, and GOULD, Circuit Judges.

Cody Storer appeals his sentence following his guilty plea to conspiracy to possess with intent to distribute methamphetamine in violation of 21 U.S.C. § 846.

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Storer asserts that the government agreed to file a substantial assistance motion pursuant to U.S.S.G. § 5K1.1 and 18 U.S.C. § 3553(e) requesting that the district court depart downward from a statutory mandatory minimum life sentence to a sentence within a range of 41 to 67 months. According to Storer, the government breached the plea agreement by requesting only a two-level downward departure that resulted in a sentencing range of 87 to 108 months. We dismiss the appeal for lack of jurisdiction in light of a valid appeal waiver.

Storer argues that his appeal waiver is unenforceable because the government breached the plea agreement. However, Storer forfeited his breach of the plea agreement claim by asserting it for the first time on appeal. In addition, Storer has not demonstrated plain error. *United States v. Robertson*, 52 F.3d 789, 791-92 (9th Cir. 1994); *United States v. Gonzalez*, 16 F.3d 985, 989-90 (9th Cir. 1993); *United States v. Flores-Payon*, 942 F.2d 556, 560 (9th Cir. 1991). In any event, the unambiguous integrated plea agreement establishes that the government did not promise to request a particular sentence.

We decline to review Storer's ineffective assistance of counsel claims in this direct appeal. Such claims generally should be raised in § 2255 proceedings. *United States v. McKenna*, 327 F.3d 830, 845 (9th Cir. 2003).

APPEAL DISMISSED.